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## Namibia's Parliament in a Presidential Age: Analysis and Opinion

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### Abstract

Parliaments and political parties in Africa face general disapproval in public opinion. Political regimes everywhere over the past decades have favoured presidential over parliamentary dominance. In Namibia executive dominance has approached hegemonic control in the view of many. Despite electoral variety and repeated free and fair elections, parliament remains sidelined for the vast most part. This paper explores some of the common issues around regime types that disfavour parliaments around Africa and elsewhere, while also pointing to some areas of reform that might renew and strengthen parliamentary institutionalisation especially in Namibia. Reform in parliament is both a needed and an essential link beyond the ballot box for continued democratic improvements over the coming years.

### Overview

President Pohamba gave a ringing endorsement of Parliament's role in Namibia's developing democracy at its recent opening for the 2007 sessions of the 4<sup>th</sup> Parliament. Despite this, one overwhelming truth prevails: **we live in a presidential age.**

The success of the strong or executive presidential system in dealing with economic crises and war in the surviving superpower was already well established at the end of the Second World War. Over the decades since then, the popularity of this system, or hybrids of it, has been reaffirmed in political system choices throughout Latin America, Asia, Eastern Europe and the former Soviet satellites, and Africa. (Przeworski 2001) China and Russia opted for strong presidents to replace their older systems of party leadership. Nigeria, South Africa, and Zimbabwe all opted to replace inherited Westminster-style parliamentary systems with presidential ones. Only a few Commonwealth survivors in the Caribbean and settler states like Australia and Canada continue to use the older **parliamentary supremacy** model.

The strength of the presidential system is founded on three essential characteristics that were not lost on the Constituent Assembly writers of Namibia's Constitution: the **legitimacy** of a president's being the only politician elected by all the people (not first among equals, but first and foremost), the **symbolic unity** of national purpose embedded in a single leader, and the **speed of action** from a single decision-maker for rapid response to military and economic crises. The downside of such a system is a tendency toward dictatorship, life presidents (especially in Africa), and a conflict inducing, winner-take-all approach to political differences. These negative attributes usually lead to unpleasant tendencies and situations. Institutional innovations such as the divided executive (French) model, robust checks and balances, or term limits can and do soften the downside effects in many political systems.

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In recent times assertions of legislative power, such as the Blair super-majority of 1997 and the so-called “Republican revolution” of 1994 in the U.S. Congress, were only transient occurrences countering a secular wave of presidential dominance.<sup>2</sup> Long gone are the days when American President Thomas Jefferson had to stand in the boarding house waiting for a vacant seat at the dinner table. Presidents are the new kings or emperors, with some institutional balances here and there mediating power relations. Hybrid reforms (like the French model of a strong president and a strong prime minister) and some policy constraints, around the debt crisis and the end of the Cold War, have partially hemmed in presidential ambitions in some countries. But presidentialism remains the dominant governmental form worldwide.

## Namibia’s Constitutional Choices

Namibia chose both a divided executive and constitutional term limits to constrain the institution of the presidency along with weaker checks and balances.<sup>3</sup> However, in the formative years under one party dominance, executive power was on the ascendancy to create and institutionalise a strong and effective central government in the new dispensation. As with the founding of the American Republic, “energy in the executive,” to use Alexander Hamilton’s phrase from the *Federalist Papers*, was much desired.

The founding Speaker of Parliament, Mosé Tjitendero, as quoted in Bukurura, emphasised the practical necessity of such a focus in the early days of the new Namibian Republic: “Namibia required a strong effective government with decisive political action. Institutionally, the consensus around these needs and imperatives gave primacy to the executive – the president and his government.”(Bukurura 2002) This presidential dominance is central to Henning Melber’s critique of Namibia’s Parliament and indeed of Namibia’s democracy.(Melber 2006) Nujoma’s taking a unique third term only extended the presidential dominance, even causing some dissent in the upper ranks of SWAPO.

Parliament by contrast has struggled to find its feet. Compared to a presidential performance approval rate of 90% in 2006, the National Assembly reached 75% and the National Council 65% (Regional Councillors 60%). (Keulder 2006:44) These figures reflect the generally strong support that Namibia’s government receives at present. When it comes to trust, the President scores 80% “somewhat or a lot,” the National Assembly gets 70% and the National Council 63%. (Keulder 2006:26) Faring worst in this comparison are opposition parties at 34% (28). Although these figures surpass the global trend, they reflect an uneven character to the democratic institutions that Namibia is trying to consolidate.

Several legal/structural factors can account for parliamentary weakness: party “ownership” of the seats, Cabinet numerical supremacy, one party dominance, unequally developed branches, and personality disputes, to mention the most important ones. Let us examine these in turn.

The Constitution of Namibia allocates to the registered parties the task of filling the seats won at the ballot box. This principle has been reaffirmed repeatedly in practice and has been sanctioned by the courts. The Parliamentary chambers can remove members under legally specified conditions, but the parties face no restrictions and need provide no justification for their actions. The seats are the property of the parties, whose executives may exercise their control according to their internal rules. Party lists drawn for election purposes may be ignored and even the wishes of the electorate may be bypassed immediately as in the case of SWAPO’s replacing Local Authority Councillors-elect before they were sworn in.

As a practical matter this provision dis-empowers the backbench in all parties, but especially in the majority party. Backbenchers (i.e., non-cabinet members of the majority party) have no power to negotiate

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<sup>2</sup> Blair, of course, has been widely accused of acting too “presidential”.

<sup>3</sup> Some of the weakness results from electoral outcomes of one party dominance rather than constitutional arrangements. For example, Namibia has a two-round presidential election system to strengthen the legitimacy of the president by requiring an absolute majority for election, but we could conceivably have a divided executive due to separate legislative elections being able to produce a different National Assembly majority party than the president’s. Presidential veto could also come into play at some point should a split executive occur. Constitutional change requires super majorities as a further check on the majority.



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substantive issues with the leadership. Even a hint or threat to break with party discipline by abstaining or voting with the opposition could send the offending member to the unemployment queue.<sup>4</sup>

In any case Cabinet (comprised of Ministers and Deputy Ministers and a few others) has maintained a numerical majority in the National Assembly from the beginning. Cabinet, through the Cabinet Committee on Legislation, originates virtually all of the bills considered by Parliament and monopolises the legal drafting capacity of government. In eighteen years of Parliamentary activity only one or two “Private Member’s Bills” were attempted, and they failed to make it out of committee. In terms of law-making **Government in Namibia is Cabinet Government**. Although Parliament “debates” the bills and budgets, Cabinet has already determined the outcome. While both chambers of Parliament may take months to “debate” the budget, not one cent of a budget under consideration has changed as a result. The budget is fully cooked when it is placed on the Speaker’s desk.

As with some other southern African countries, Namibia has developed a “one-party dominant” political system.(Du Pisani and Lindeke 2007) Capturing some seventy-five percent of the votes and controlling a similar percentage of the seats in Parliament gives the SWAPO Government a commanding control over Parliamentary matters.(*Agenda for Change* 1995) Debates, questions, motions, and even walkouts have limited effect on the legislative output. As a former U.S. Speaker Sam Rayburn once famously said, “ If you have the votes you don’t have to make speeches.” Indeed, a good idea may suffer if identified with the opposition, as happened with the pension increase issue a few years ago. Such overwhelming one-party dominance also impacts civil society, public service, and media political space as a large majority of people share a frame of reference and obedience to party leadership. It reinforces Cabinet dominance over law making with a “potential” super majority that could change anything and everything.<sup>5</sup>

Institutionally in Namibia, the Executive was more effectively established than Parliament from the beginning. President, Prime Minister and Cabinet structures transfer more easily from political party structures than does a bi-cameral, adversarial body that includes opposition party representation. Parliament is not the same as a party congress. Additionally, the National Council had to be created from scratch two years after the National Assembly’s continuation of the Constituent Assembly, whose grand task was writing the Constitution. Given the minimal establishment and functioning of the Regional Councils, the historical apartheid baggage of “second tier” government, and the hostility of some National Assembly and Cabinet figures to a second chamber, the National Council had a lot of ground to make up in its first decade to become a national body with appropriate stature.(Forrest 1995) Survival in its present form remains a question, as tinkering with election schedules and merging of the two chambers has been repeatedly mooted.(Hopwood, 2005:21; Hengari 2007)

The National Council now has the further difficulty of being even more dominated by SWAPO than the National Assembly. Because of the constituency base for electing Regional Councillors, and then National Council members being appointed from them, different parties achieve representation compared to the National Assembly’s party list system. Therefore, the “official opposition” in parliament currently has no seats in the National Council (nor in the regions). The dynamics of the two bodies are different, further contributing to the uneven institutionalisation of government structures. With one foot in the regions trying to deal with the slow rollout of decentralisation, and the other in national issues as the house of review, the National Council has a difficult agenda. The National Council often claimed to be the only real “check or balance” on executive power under the Chair of Kandy Nehova. However, most of its challenges were assertions of institutional status and recognition rather than policy disputes (with a few notable exceptions).(Forrest 1995)

Parliament also was embroiled in leadership and personality disputes over the course of its early development. Despite recognition by international legislative bodies with international meetings hosted,

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<sup>4</sup> More popular or problematic members could be given new assignments in distant diplomatic postings or similar bureaucratic dead-ends.

<sup>5</sup> Fortunately, SWAPO’s leadership has opted to embrace democratic practices and not abuse its majority. By comparison, many of the African countries that adopted democracy in the early 1990s have dramatically rewritten their new constitutions, an action that weakens and undermines the legitimacy of the document and the principle of the rule of law.



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officials elected to governing bodies at Commonwealth and IPU level, and widespread respect, Namibia's Parliament has suffered from being in the shadows of the executive, especially the Founding President and to a lesser extent the founding Prime Minister.

Former President Nujoma shares the founding liberator role with the first generation of African leaders, who have now mostly passed from the scene. Unlike Nkrumah and Mugabe, Nujoma did not preside over a declining economic and social environment precipitating new repression. In that respect he follows the tradition of Presidents Khama and Mandela. Like other retired presidents (Nyrere, Chisano, Mkapa), Nujoma has held tightly to the reins of party control as SWAPO's first and only president. He still dominates the political landscape as no other can (or should).

In contrast Parliament must still establish itself. Unlike the American Congress that was established by Article One of the U.S. Constitution (implying the first priority of government) or the Westminster model of "Parliamentary Sovereignty," Namibia's Parliament was established with the seventh chapter of the Constitution -- sort of buried toward the back. Its deliberative, oversight, and consultative functions are still to be entrenched and institutionalised. Major changes in party fortunes or cabinet size could bring needed changes, but these seem unlikely any time soon. Therefore, deliberate institutional reform is a more likely option, though there seems not to be a strong popular demand for such a transformation at the moment.

After an initial attempt to strengthen this branch of government in the mid-1990s, following a well researched report titled *Agenda for Change: Consolidating Parliamentary Democracy in Namibia*, which brought about uneven results, a fresh look into the institution now will help to place it in a global, theoretical, and practical context. This would more effectively position Parliament for the crucial role assigned to it in National Development Plan 3 and Vision 2030 for the linkage function between government and voters as well as civil society players. Reforms could also assist with carrying out the other responsibility assigned to Parliament of overseeing the executive and the government bureaucracy. Hopefully, such an exercise will lead to a strengthening of the institution in its service to Namibia's participatory democracy and to the Namibian people.

Where do parliaments fit in the presidential world discussed above? We now turn our attention to the answer.

## Parliaments in the World

Parliaments are in general public disrepute, especially in developing democracies. Opposition parties likewise do not fare well in opinion surveys of the general public. The major dislikes seem to centre around the quality of selfishness – that is, politicians promising the world but being in the political game to benefit themselves first and foremost. Secondly, politicians are seen as having very little contact with the public except at election time. This is especially true in party-list systems, where party leaders, not the voters, determine who is selected. Finally, politicians are seen as engaging excessively in inter-party and intra-party political squabbles without regard for the public welfare. These judgements apply to developed democracies as well as to newer ones.

For example, in the *Latinobarometro* (2005) covering Latin America from 1996-2004 political parties and Congress generally fare the worst among public institutions in terms of trust. The range for "a lot or some" trust in Congress is from 17-36 % with the average in the mid to high 20's! Political parties fare even worse with a range of 11-29%. In the 2005 survey Congress rated only 28% trust, while parties recorded the lowest trust with 19% saying some or a lot. In Latin America despite a longer institutionalisation of such political bodies, presidential dominance is firmly entrenched, while democracy is still a bit precarious. Only a few countries, such as Chile, have a strong legislative history.

Asian democracies fare a little better. Political parties and parliaments in the eight countries covered by barometer surveys have relatively higher scores than in Africa, Latin America, and Eastern Europe. However, they score lower in trust than other institutions in those countries. For political parties 47%



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indicated a “great deal or quite a bit” of trust. Parliaments, by comparison, were trusted to this level by 52% of the respondents in the *Asia Barometer* survey. (Albritton and Bureekul 2005: 6)

Parties and parliaments fare worse in new democracies in post communist states. The same authors drawing on Mishler and Rose’s 2001 data from the Eastern European Countries Survey found parties to have only 12% of the public’s sentiment holding high levels of trust, while parliaments have 21%. Again these were lower findings than for other politically relevant institutions. (Albritton and Bureekul 2005: 6)

Legislatures in developed countries often fair poorly in public opinion for many of the same reasons. For example, in the 2006 mid-term elections in the United States 38% of those polled thought that Congress had done worse than in previous sessions. Anti-Washington sentiment hit record levels in June, with the President only reaching 37% positive sentiment. (Pew Survey Results, 14 September 2006) The opposition Democrats swept the elections regaining control of both houses of Congress. Long-time ruling parties in other parliaments (e.g., Canada’s Conservatives and Italy’s Christian Democrats) were completely swept out of power and into oblivion in the 1990s.

Adam Przeworski and colleagues (Przeworski, Alvarez, Cheibub, and Limongi 2001) examined regime survival in 135 countries between 1950 and 1990. They especially were interested in the question: What makes democracies endure? Several factors were reflected in the evidence that are interesting for the Namibian case, even though we fall outside their study’s time frame. In their findings, being an existing democracy, being relatively affluent, and having a favourable international climate are features that stress the existing conditions which help democracies endure. Policy choices and consequences emphasised by the authors as contributing to democratic survival include economic growth with moderate inflation, declining inequality and having parliamentary institutions. In most of these factors Namibia does well.

Given the general worldwide preference for a less stable presidential form of government, Namibia’s strengthening the legislative roles, especially in the absence of strong opposition parties, would seem to assist in the consolidation of newer democracies such as Namibia. In the longer term, economic success and the continued survival of democracy are the best hopes for long term consolidation of democratic regimes.

### **African Parliaments, Democracy, and Governance**

Historically, African parliaments were often little more than patronage dumping grounds and rubber stamps for the president. This was especially true during the long one-party system of governance during the 1970s and 1980s. Only in recent years have parliaments flexed their muscles. In several countries, from Zambia to Kenya, parliaments have blocked attempts of incumbent presidents to alter the constitution to give themselves extra terms of office. Such legislative bravery seems limited to highly competitive party systems with unpopular presidents. Policy disputes with the executive are less well known.

The African Peer Review Mechanism (APRM) process has shown what might be considered standard parliamentary difficulties in the early assessments of countries. African parliaments are seen facing difficulties in performing the expected checks and balances and oversight roles toward executive and administrative power. Both the Ghanaian and Kenyan reports indicate similar problems in terms of executive dominance through majority or substantial representation of cabinet in parliament. In effect African parliaments are **executive parliaments**. Additional problems are found in the lack of financial autonomy, disconnect between legislators and constituents, and a lack of capacity in generating legislation and conducting effective oversight. ([www.nepad.org/2005/files/aprm/APRMKenya-report.pdf](http://www.nepad.org/2005/files/aprm/APRMKenya-report.pdf); [www.nepad.org/2005/files/aprm/APRMGhana-report.pdf](http://www.nepad.org/2005/files/aprm/APRMGhana-report.pdf) accessed 9 March 2007; Gruzd 2006)

Recommended reforms in the Peer Review documents include separating portfolio ministers from parliament (this would be similar to the French system). In the case of Ghana there are 88 members of cabinet in parliament! Compare this with Botswana or Germany with around fifteen ministries each. Another suggested Peer Review reform was to provide autonomy for parliamentary remuneration and for the institutional budget decisions from executive political interference and legislative misuse (self enrichment).



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Perhaps the most useful and relevant recommendation was to build capacity for committees (especially Public Accounts and Finance) in terms of resources, research, and staff. Such reform does not require constitutional changes as do some of the others. Additional benefits might also be found from strengthening drafting and ICT capacity and more active use of members' bills giving access to civil society and constituents. Such reforms could help establish a greater respect and trust in parliaments.

African parliaments are unlikely to rein in executives in this presidential climate; yet they can do much more to be effective legislatures as part of a developing democratic governance. Amid calls for transparency for dealing with corruption and accountability, effective parliamentary oversight is a critical component of the process in most countries together with auditing, ombudsmen's offices, anti-corruption offices and a robust media as watchdogs against bad practices.

### **African Democracies in Comparative Perspective**

Despite varieties of form (unicameral and bicameral) and election systems (constituencies, party list, and interest group appointment among others), African parliaments were notorious for being little more than sinecures for elite cooptation and enrichment over the decades since independence. They performed their dutiful rubber stamp functions but little else. Status and financial rewards deflected opposition from more aggressive or violent opposition. The democratic reforms since the 1990s set the stage for parliaments to assert a more substantive role in democratic governance. While most attention since the 1990s has been on elections, parties, and civil society, parliaments have begun to seek a more important role in democracy, law making, and governance.(Bratton and van de Walle 1997)

For example, the SADC Parliamentary Forum, founded and based in Namibia, was ahead of governments in setting **African standards** for election conduct and critically evaluating elections in the sub-region long before the SADC Secretariat and Summit of Heads of State and Government attempted to usurp this function. Similarly the Pan African Parliament (PAP) was established very soon after the transformation of the OAU into the AU. Its legitimacy as a branch of continental governance central to a higher level of unity was recognised immediately, even if the status, functioning, and representation remain problematic.

An important division over the location of the PAP illustrated the symbolic choice between Libya, whose parliament was the epitome of a rubber stamp, and South Africa, where Parliament has lively debates and active committees even in the face of a one-party dominant system. African governments eventually chose South Africa to host the continental body, and also institutionalised representation for opposition parties and gender, as the SADC Parliamentary Forum had done before it.

Most important in this new phase of parliamentary assertion was the role played by parliamentary debate and constitutional change surrounding the efforts to extend the terms of sitting presidents. In Zambia, Kenya, and Malawi parliamentarians led the resistance against the executive, thereby exercising the time honoured legislative role of checking the power and ambitions of the executive. Even when such constitutional changes were not blocked, as in Uganda, the legislature was at the centre of the debates and decision. (Mthembu-Salter, 2006) In addition to ethnicity, partisanship and personal ambition as motivations for these contests, parliaments debated what was best for the political arrangements that serve the country in some larger philosophical engagement.

The resurgence in institutional analysis in Political Studies in recent years has also brought renewed interest in parliaments.(Hout, 2006: 26) Important issues involving legislative roles seem to be at the centre of concern about democratic consolidation and "good governance." Included among these issues are the role of parliaments in executive-legislative relations, budget decisions, auditing control, ombudsman functions, and representation of the people. Although the British position of "parliamentary supremacy" is no longer taken as an ideal, legislatures are seen to have significant roles in both democratic consolidation and in improved governance and development.

Mohammed Salih (2006c) in a recent study sets the context of parliaments in Africa that is worthy of review here. Although many traditional African states had some type of assembly or council to advise or hold



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leaders to account, these were not the organic foundation of the independence era parliaments in Africa. Instead, hastily imposed modern parliaments were created across Africa just before independence, but these had no deep roots or sustained experience. The one-party states, personal dictatorships, and military coups that followed only served to further the marginalisation of parliaments in Africa.

Only the reform period of the last two decades has seen parliaments rise again to seek an appropriate place in the newly re-emerging democratic order. The different election and party systems, as well as the different legislative structures emerging out of different country histories, create a wide variety of African experiences. Fourteen countries have tried bi-cameral bodies to at least symbolically represent some constraints on the executive, including five in southern Africa. (Weise 2003) In the countries with a French colonial tradition or francophone connection, National Congresses embodying diverse components of political and civil society were often instrumental in the transition to democratic reform. Not all were successful to be sure, but the role of representation of the people was central to the process of constitution writing and regime change. (Clarke 1995)

Nonetheless, the modern democratic parliaments that are now under reconstruction still must address some of the standard legislative functions in order to adapt their functions to the particular circumstances of each country. Salih outlines six key roles or functions of political governance that are generic to legislatures in the modern world:

1. *Legislation, where proposals and programs emanate, in the main, from the political executive*
2. *Representation by providing the link between government and people*
3. *Scrutiny of the executive to ensure that government is accountable, including the power to remove it*
4. *Political recruitment of a pool of talent, some of which is expected to find its way to leading political and decision-making position*
5. *Legitimacy through representative legislation, debating public affairs and government performance openly*
6. *Conflict management (Salih 2006c: 13)*

Evaluating these functions in the African context illustrates both the resurgence of parliaments and also their limitations. The general consensus from a variety of African democratic cases suggests that executives still dominate in lawmaking. Outside the one-party dominant countries, parliaments may have a better chance to represent the people when there are constituency-based electoral systems, or at least a mixed system in which some legislators are elected from constituencies (for example, in Lesotho). But parliaments are becoming more assertive in oversight activities. Increasingly, for those countries that have managed to begin institutionalising their own democratic practices, APRM activities and other networking activities have brought a great deal of attention to improving performance and professionalism in key offices (audit, ombudsman, anti-corruption, election commissions) and trying to achieve better, if not best, practices.

The general low esteem of opposition political parties and parliaments in Africa and elsewhere limits their role in legitimation, yet parliaments are the locus of activity for the multiple parties that were so insistently demanded by civil society in the 1990s. Over time and with improved performance, parliaments should rise in stature in the eyes of citizens. This might also assist in the creation of recruitment channels from legislative rather than party and other vehicles as has been the pattern since independence. Regional, continental, and international parliamentary fora can raise the visibility of parliamentary participants for recruitment to other positions in or out of government.

In conflict management, too, parliaments and political parties have traditionally shown the capacity to serve as conduits for dialogue or inclusion that take the sting out of the “winner-take-all” character of contests for the executive. Whether through bicameral options based on regions or traditional authorities, or through election mechanisms that favour smaller (minority interest) parties, parliaments have long served the function of inclusion in African politics. As with *Sein Fein* in Northern Ireland, African parties can sometimes be



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conduits for negotiation with armed wings to bring a stop to conflict. Just as ethnic brokers can instigate collective violence, they can also help to contain or end it. Parliaments in Mali and Kenya did this in the mid-1990s to stem rampant ethnic violence around elections. (Salih 2006c: 14-5)

### **Namibia's Parliamentary Performance**

At this point, then, the task is to examine how Namibia appears in respect of these functions. In terms of the first function (lawmaking) Namibia is at the extreme of executive dominance (in line with the British tradition). Party discipline and cabinet dominance have created a monopoly of the executive branch over lawmaking. For example, in the budget process (Motinga 2006) not one cent has been changed in the executive budget during legislative discussion in eighteen years! Despite two houses of parliament "debating" the budget, the only hope is to influence the next year's budget or a mid-term mini-budget in some uncertain manner. Budget negotiations and decisions occur within Cabinet and between ministries out of public and parliamentary view. (Bertlesmann-Scott 2004) Given the size of the ruling party majority and the thoroughness of executive dominance, the budget is considered a "done deal" when it is introduced to the National Assembly, and the government can immediately begin spending money as if it were already law.<sup>6</sup>

Budgets are critical but typical examples of executive dominance. Control over money and war long have been the most important government tasks. Namibian troops were sent to the conflict in the DRC without prior parliamentary debate. However, war-making powers are typically executive ones in any case.<sup>7</sup> The same was true for the declared "State of Emergency" invoked by the President in 1999 after the failed uprising of Caprivi secessionists. (Melber 2006) The executive dominance of these most important cases is reproduced in everyday legislation as well.

Because the party legally "owns" the seat derived from its party list, the party can remove any occupant at will. In effect this reduces any chance of a backbench revolt or even a hint of such a thing. Any member threatening to break party discipline would immediately be looking for work. Only in a few rare instances have parliamentarians even abstained from a vote. However, absenteeism is another matter that also contributes greatly to the low esteem of parliament in Namibia.

Recent backbench activity at first appeared to be an important new parliamentary diversion. However, it seems rather to be related to a wider phenomena of politicians and other leaders posturing ahead of the SWAPO Congress, scheduled for later in 2007.

Although "private member bills" are legally permitted as a vehicle for individual members or civil society to participate more actively, and the National Council is supposed to represent the regions (similar in some ways to the German Bundesrat or upper chamber), only one attempt has been made to date, by a civil society coalition for gender equality quotas, that was killed in committee. The National Council as the regional representatives have never introduced any legislation dealing with regional matters, although they have that authority. Lawmaking is not a legislative priority, though debates (sometimes heated ones) do occur.

The National Council issue also raises the representation function as well. One long-held criticism of the Namibian political system is that voters elect from a party list but have no one person to represent their interests or to whom they can bring complaints. Members of the National Assembly are beholden to party leaders, not to the voters. Although the ruling party assigns parliamentarians to geographic areas, these members are not necessarily well known in those areas, visits are rare, and linkages are very rarely used by citizens. While Regional Councillors are voted in by constituency, voters have little contact with them, and they have very little power or authority under current decentralisation efforts. Although opposition parties do

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<sup>6</sup> This is still contingent on passage of the budget within a three month time period and based on a percentage of prior authorisation from the previous year's budget. The cabinet reorganisation by incoming President Pohamba created some confusion, delay, and complication in this respect in 2005 because of the last minute changes, but it followed the normal pattern. Typos in the 2007-8 Budget create an interesting procedural dilemma.

<sup>7</sup> French theorist Tocqueville referred to these powers as "near monarchical" in his 1830s work *Democracy in America*.





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represent ethnic constituents and other categories of voters, not much support comes their way, nor do they have much chance of success in capturing power in the near term.<sup>8</sup>

Public contact with elected representatives seems limited as indicated by Table 1 below drawn from *Afrobarometer* data from early 2006. (Keulder 2006:13) Rural contact with officials seems to favour Regional Councillors and National Councillors by a very slight margin especially among the more active participants. Otherwise there are no significant differences between men and women or urban and rural respondents in terms of contact with officials. A very slight bias toward constituency representation is indicated. However, the most consistent finding is the lack of contact by the vast majority of citizens.

**Table 1. Frequency of citizen contact with elected officials**

Official	never	once-few -often
Local Authority Councillor	83%	17%
National Council representative	87%	13%
National Assembly representative	90%	9%
Regional Councillor	79%	21%

In terms of Civil society's role in the legislative process Victor Tonchi argues that the lack of participation is due to an unsuitable climate for such participation:

Civil society organisations that disagree with the government are severely castigated and marginalised. Civil society in general is viewed with suspicion and is seen as foreign controlled. Despite its abnormal relationship with civil society organisations critical to its policies, the government has not impeded the activities of such organisations. (quoted in Bertlesmann 2004:17-18)

Indeed, there are many specialised organisations that interact with government on a daily basis, but few of them are of a political or general interest nature. Those organisations that are involved in governance and democracy issues have an equivocal relationship with government as Tonchi suggests. Many of the largest and most important are affiliated with SWAPO. Government often goes through the motions of consulting or including NGOs through the umbrella body of NANGOF (even when it was moribund for a few years). Parliament, usually through the leadership, frequently expresses a desire to interact with the public to a greater degree. These desires are even written into parliament's budget performance matrix. The ambivalence toward this process shows especially in the outcome of the hearings on the Revised Child Status Bill showing a strong consensus on certain items among a large number of civil society groupings that testified persuasively before the relevant committee (*Parliamentary Journal* V. 3, N. 3, September 2005), which the National Council completely ignored in its subsequent floor vote.

### **Namibia's Parliament and the Possibility of Reform**

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<sup>8</sup> See Andre du Pisani and Bill Lindeke. 2007. "Stuck in the Sand: Opposition Parties in Namibia." Windhoek: IPPR [forthcoming pending prior publication in South Africa].



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One of the important compromises resulting from Namibia's Constitutional deliberations of the Constituent Assembly was the creation of a bi-cameral parliament. The result was an institution with two chambers or houses chosen by different electoral mechanisms and representing different configurations of the public with a National Assembly and a National Council. Several reforms have been proposed over recent years but the size and configuration of the bodies seems reasonable and stable for the moment. (Keulder, van Zyl and Breu 2004; Samuel 2006; Hengari 2006)

The National Assembly consists of 72 elected representatives chosen by a party-list system with a "lowest remainder" mechanism for filling the seats. This system tends to encourage smaller parties, rather than larger coalition or "catch-all" parties, to give every reasonable minority point of view a chance to have a voice in parliament. This was especially important in the independence election, where people had their first opportunity to express their wishes. As the largest legislative body, it is supposed to be close to the people and represent closely their policy preferences. An additional six non-voting members are appointed by the President, allowing for additional representation of population groups or specialised expertise for Cabinet.

In other countries' political situations electoral mechanisms have been constructed to strengthen governing coalitions. For example, in Germany and Sweden a floor is established requiring a minimum percentage of votes to qualify for any seats, with the surplus reallocated to the larger parties. Such a system encourages coalitions and strengthens major parties and executives, while discouraging those "splinter parties" with only a few votes. In Namibia's case a one party dominant system perhaps leaves the executive too powerful compared to the checks and balances role of other institutions. In all cases the party central authorities control the elected party members, limiting their independence and their ability to provide a robust oversight function.

In contrast to the National Assembly, the National Council members are chosen from the Regional Councils, two from each, and the Regional Councils in turn are elected from constituencies delimited within each region. At least the Regional Councillors represent voters in specific constituencies. However, most voters have no representative on the National Council whom they could hold accountable, since fewer than a quarter of the constituencies are represented there. At most one could say that the National Council represents Regional Councils and is expected in theory to have a regional approach to public issues. Unlike the similar German Bundesrat, Namibia's National Council does not exercise initiating legislative responsibility, but rather reviews **all** legislation emanating from the National Assembly on all subjects and from any standpoint not just a regional one. In any case the National Assembly dominated by Cabinet has a hegemonic position relative to lawmaking.

In order to exercise their "oversight" function several committees have been set up in each chamber to review legislation, investigate conditions, gain input from society, and examine public and private sector performance as was recommended in the *Agenda for Change* (1995) document a decade ago. However, the limited number of "backbenchers" and opposition members makes the workload heavy and difficult, while committees frequently lack a quorum. An individual member might have from four to six assignments. These committees share secretaries and administrators among them. A committee might undertake some hearings or sight visitations every few years, but there is little time, energy or staff to go beyond such minimal activities.

The National Assembly has ten standing committees that have permanent jurisdictions, plus six other committees. Four of the standing committees could be considered procedural, while the other six have defined substantive areas: 1) Natural Resources, 2) Security, 3) Governmental Affairs, 4) Economics, 5) Human Resources, Equality and Gender Development, and 6) Public Accounts. With its regularly televised reviews of the Auditor General's reports each year, the Public Accounts Committee is the most active and visible. The more important committees have about fifteen members.

The National Council has a similar, though slightly smaller committee structure (seven). Fewer members and few exemptions for Cabinet work still means that members are spread a bit thin there too. Reform of the committee system would be a top priority to strengthen parliament in the future. **Fewer, but better and better-staffed committees would be a good start to create some real expertise and specialisation.**



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**Members on the most important committees should serve on that committee exclusively with perhaps a joint committee for economic deliberations.<sup>9</sup>**

The Public Accounts Committee is the most important and most effective, publicly reviewing as it does the Auditor General's reports for each ministry, state owned industry, and regional or local government authority body with televised coverage of some highlights of their hearings. Committees have *subpoena* powers and can compel attendance to testify under oath, though this has yet to become necessary. The workload of committees has increased with the number of bill referrals, though there is very limited staff and no real research capability. Committee assignments are on a partisan proportional representation basis. Chairs and deputies are chosen by the committees, while the PAC chair by convention is selected from the opposition members.

In addition to legislative duties, members of Parliament have ministerial ones, party political ones, and international ones. Several of Namibia's legislators from both chambers have international duties in terms of election monitoring, meetings of the International Parliamentary Union, Pan African Parliament, SADC Parliamentary Forum, the Commonwealth Parliamentary Association and EU bodies, etc. Reaching a quorum in the whole chamber therefore has been difficult on many occasions. Stricter discipline and higher priority to parliamentary matters is needed as both Presidents and Speakers have argued over the years.

Since the National Council was established later than the National Assembly, following the delimitation of regional boundaries and regional elections in 1992, it has been playing catch-up. Ever since 1992, the bodies (National Council and Regional Councils) have been struggling for recognition and equal status with the lower house. As the house of review, the NC has returned several pieces of legislation to the NA for reworking. This includes important legislation such as the Communal Land Act. The former Chairperson of the Chamber argued that the National Council was the only real check on the Executive. With fewer ministerial duties and a specific representation role toward the regions, the National Council nonetheless has failed to initiate any legislation, choosing instead to let the executive initiate literally 100% of the legislation.

The National Assembly lacks robust debates on policy for the most part and is widely considered a rubber stamp (Melber 2006) for the Executive which has dominant numbers. Speaker Theo-Ben Gurirab (*New Era* 24 November 2006: 3) has suggested constitutional changes to remedy this defect, but less drastic changes – more opposition seats from electoral outcomes, a smaller cabinet, including deputy ministers in committee service, or having a smaller cabinet (like Germany or Botswana) -- do not require tinkering with the constitution at all. Strengthening committees with research capacity would be another alternative to constitutional change. Strengthening legislative performance would be another improvement in Namibia's democratic consolidation.

As Dianne Hubbard from the LAC explains:

I can say that the biggest obstacle in our work is getting accurate information from Parliament on a variety of issues. Since we find this so difficult as persistent lawyers, it must be well-nigh impossible for the average citizen. To give just one small example, it is difficult to find out what is on the agenda for debate in advance, and since many agenda items are postponed, it is hard to be present for debate on a particular issue without wasting enormous amounts of time going to Parliament on days when the scheduled debate does not in fact happen. (quoted in Bertlesmann 2004:15-16)<sup>10</sup>

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<sup>9</sup> Joint committees are made up of members of both chambers.

<sup>10</sup> Although some improvements are noted on the parliament web site, budget documents for the 2007-8 fiscal year were not available to journalists with publishing deadlines and committee members' lists for the National Council in 2007 include people who did not stand for election in 2004, were defeated, or are deceased! Asset declaration statements, due every year, have not been completed by all National Assembly members by the start of the second year of the 4<sup>th</sup> Parliament. This is the same Parliament that has championed President Pohamba's anti-corruption emphasis.



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Namibia has one of fourteen African bi-cameral legislatures in Africa. However, as suggested previously, the two chambers have different levels of institutionalisation and power. The National Assembly has been the main locus of cabinet members and ranking party leaders for both government and opposition. With a few exceptions, members of the National Council are less well known nationally and even within party circles than their National Assembly counterparts. The National Council has regularly come under scrutiny in terms of just where in the system they belong. Constituents often complain that members spend too much time in the capital and not enough in the constituencies. This image undermines the impression that constituencies give greater personal representation and accountability to the voters.

### **A New Agenda for Change and Renewed Reforms**

The main proposals from the *Agenda for Change* (1995) document remain viable. Among the successful reforms one might include establishing several Standing Committees to consider bills from government and conduct oversight, as well as improving gender inclusion to the point that Namibia ranks 24<sup>th</sup> in the world (fifth in Africa and third in SADC) in terms of the percentage of women represented in parliament. (Du Pisani and Lindeke 2007; Bauer 2006) Areas that remain troublesome are the difficulty in retaining staff at professional levels (ICT and legal), the weakness in conducting effective oversight through the committee system, and inadequacy in promoting robust public participation in both of the above areas.

Budget and staffing for both chambers over the next three years are set to increase modestly with the recently tabled 2007-8 budget. Quality improvements are also needed to bring Parliament to its rightful position in Namibia's democratic system.

Although budget documents and cabinet decisions in recent years have established performance standards and accountability requirements, Parliament's debates have not kept up with the executive performance reforms. Genuine efforts have been made by the Parliamentary leadership and members, but the results fall short of the hoped-for levels to empower Parliament to perform its assigned role in Namibia's democratic vision. Additional reforms are needed to further the process of institutionalising parliamentary democracy.

### **Conclusion**

Namibia's Parliament, like those elsewhere in new democracies around the globe, struggles with problems of low levels of popular support and trust, weak institutional capacity, and profound subordination to executive dominance. Several factors have been identified that contribute to this condition that are not unique to Namibia, while some factors are specific to our circumstances. Needed changes can improve the democratic functioning of Namibia's political system without the dangerous tinkering with the Constitution suggested by others. The most important changes involve strengthening the capacity of committees in Parliament to open public access and increase effectiveness of the oversight function that Parliament should perform with respect to the entire spectrum of public and private responsibilities of democratic governance. With the support of the President and the Speaker the discussions on these topics have already begun.

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